SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2259 OF 2006

Mukesh Shah & Ors ....Petitioners

Vs.

Devis David & Anr. ....Respondents

Shri V. S. Shetty, Advocate for petitioners.

Ms. M. M. Deshmukh, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE : 10TH NOVEMBER, 2006.

P. C.:-

By order dated 06/07/2005, the 7th Judicial Magistrate, First Class, Thane discharged the petitioners/accused of the offences punishable under Section 323,504, 506 and 420 of the Indian Penal Code. The complainant filed criminal revision application in the Sessions Court at Thane. By a detailed order dated 31/08/2006 the learned Sessions Judge allowed the revision application. He set aside the order discharging the accused and directed the Court of

Judicial Magistrate, First Class to frame charges against the petitioners/accused. This order is challenged in this Writ Petition.

2. I have heard the learned counsel for the petitioners at length. He contended that the complaint filed by the first respondent discloses no offence. He submitted that in the evidence led before the charge, the complainant has made some improvements which clearly indicate that the complaint is malicious and frivolous. He submitted that the complaint is totally of a civil nature and hence the learned Sessions Judge erred in directing that charge be framed against the accused. In support of his submission, the learned counsel relied on the judgment of the Supreme Court in ***Ram Biraji Devi & Anr. Vs. Umesh Kumar Singh & Anr. 2006 DGLS 319.***

3. Having perused the complaint and the evidence on record, in my view, it is not necessary to interfere with the impugned order This is certainly not a case where it can be said that prima facie no offence is disclosed at all. Assuming that the complainant has made some improvements in his evidence, whether the complainant's case is true or not can be appreciated at the trial and not at this stage. The learned Sessions Judge has rightly observed that at this stage the accused cannot be discharged by appreciating the evidence. In

the circumstances of this case the entire evidence will have to be weighed and evaluated at the trial to come to a conclusion whether the accused are guilty or not. The judgment cited by the learned counsel has no application to the facts of the present case. In that case the complaint did not disclose any offence. There was not even a whisper of allegation or averment made therein constituting an offence for which cognizance was taken by the Magistrate. The version of the complainant was self contradictory. It is against the backdrop of these facts that the Supreme Court quashed the complaint. Such are not the facts here. Here the complaint and the evidence does prima facie disclose an offence. There is no merit in this petition, the petition is dismissed.

(SMT. RANJANA DESAI, J)